

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

WILLIAM VIVAR

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1931

Decision No. CU 4786

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$8,500 was presented by WILLIAM VIVAR based upon the asserted loss of real and personal property located in Holguin, Oriente, Cuba. Claimant has been a national of the United States since his naturalization in 1950.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant presented his claim in the amount of \$3,000 for land, \$5,000 for a house, and \$500 for personalty. At the same time he described his loss as \$3,000 for land, \$7,000 for the house, and a bank account of \$465.74 in Banco Nunez, in Holguin.

Improved Real Property

The Commission finds on the basis of evidence of record that claimant inherited and was the sole owner of a house at 68 Miro Street in Holguin. He left Cuba in 1944 but permitted his daughter and her family to use the property rent-free. Subsequent to their departure from Cuba in April 1963, the Government of Cuba took the property.

On December 6, 1961, the Cuban Government published its Law 989 which provided for confiscation of all assets, real and personal, including bank accounts of persons who left the country.

The Commission finds that claimant's improved real property was taken by the Government of Cuba on May 1, 1963, pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The house has been described as having a living room, dining room, three bedrooms, a kitchen, bath, service room, patio. In 1936 the monthly rent was \$36.00. However, the building had been renovated at a cost of \$4,000. On the basis of the record, and evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that on the date of loss the improved real property had a value of \$8,000.

Bank Account

The record, including correspondence with the bank of deposit and copies of check of deposit, reflects that claimant had an account with a balance of \$465.74 in the Holguin branch of Banco Nunez, which the Bank declined to transfer in August 1960.

The Commission finds that claimant's bank account was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, supra. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Personal Property

On the face of his claim form, claimant listed \$500 for personalty, but on page 3 of the form in computing his claim, he omitted mention of personalty other than the bank account (above).

In response to inquiries, claimant has submitted lists of items left at the home of his daughter, at 68 Miro Street in Holguin. A second listing reflects dates of purchase of some items subsequent to claimant's departure from Cuba.

The Commission finds that the record does not establish that said personalty, consisting of household furnishings belonged to claimant, and not to his daughter's family. Accordingly, the Commission is constrained to deny this item of claim and it is hereby denied.

Thus the Commission concludes that claimant suffered a loss in the total amount of \$8,465.74 within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
December 6, 1961	\$ 465.74
May 1, 1963	<u>8,000.00</u>
	\$8,465.74

CERTIFICATION OF LOSS

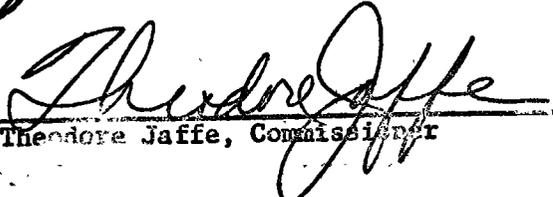
The Commission certifies that WILLIAM VIVAR suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Thousand Four Hundred Sixty-five Dollars and Seventy-four Cents (\$8,465.74) with interest at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

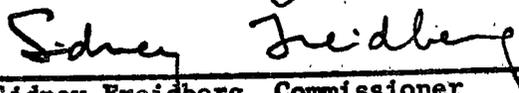
APR 29 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)